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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

AMERICAN CAB, LLC, a California limited liability company,, Plaintiff, v. SUNLINE SERVICES GROUP; SUNLINE TRANSIT AGENCY, and DOES 1-100, inclusive, Defendants.	Case No. CV 12-05552 GW (OPx) Assigned to Honorable George H. Wu **DEFENDANTS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT** Hearing on Motion: Date: April 1, 2013 Time: 8:30 a.m. Courtroom: 10 Date Action Filed: June 26, 2012 Trial Date: May 14, 2013

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 1, 2013 at 8:30 a.m., or as soon thereafter as the matter may be heard, in Courtroom 10 of the United States District Court for the Central District of California, located at 312 N. Spring Street, Los Angeles, CA 90012, Defendants SunLine Services Group ("SSG") and SunLine Transit Agency ("STA") (collectively, "Defendants") will and hereby do move for summary judgment or, in the alternative, for partial summary judgment ("Motion") pursuant to Rule 56 of the Federal Rules of Civil Procedure on American Cab, LLC's ("Plaintiff") complaint for a violation of Section of the Sherman Act, 15 U.S.C. § 1.

This motion is made following the conference of counsel pursuant to Local Rule 7-3 which took place in-person on February 6, 2013, in Riverside, California.

This Motion is brought on the ground that Plaintiff cannot meet its burden of proof at trial and that Defendants are entitled to judgment as a matter of law. Defendants are entitled to judgment as a matter of law for the following two independent reasons:

1. Defendants are incapable of "concerted" action and thus not subject to liability under Section 1 of the Sherman Act and

2. Defendants are immune from liability under the Sherman Act pursuant to the State Action Immunity, which immunizes actions taken pursuant to state policy.

In the event the Court determines not to grant summary judgment in full, Defendants also respectfully move the Court, pursuant to Rule 56(d) of the Federal Rules of Civil Procedure, for an order adjudicating the facts set forth in the lodged Statement of Undisputed Facts and Conclusions of Law as being without substantial controversy so that such facts shall be deemed established for trial on any remaining claims for relief.

This Motion is based upon this Notice of Motion and Motion; the

Memorandum of Points and Authorities in Support Thereof; Defendants' Proposed Statement of Undisputed Facts and Conclusions of Law; Defendants' Proposed Judgment; Defendants' Proposed Order; the Request for Judicial Notice submitted herewith; the Declarations of Robert Owen and Carolyn Rude submitted herewith; all pleadings and papers on file in this action; any Reply papers filed in support of this Motion; and such argument and further evidence as may be presented at the hearing on this Motion.

Dated: February 28, 2013

RUTAN & TUCKER, LLP
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By: s/s
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff American Cab, LLC ("Plaintiff" or "ACL") filed a complaint (the "Complaint") against SunLine Services Group ("SSG") and SunLine Transit Agency ("STA") (collectively, "Defendants"), both joint powers authorities, with one cause of action for Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 ("Section 1"). ACL generally alleges that Defendants have acted in combination or conspiracy in enacting regulations that harm ACL and other taxi companies. (Complaint, § 23.) ACL seeks injunctive relief against Defendants. The Complaint does not seek monetary damages. (Complaint, Prayer For Relief.)

As described below, Defendants bring this motion for summary judgment, or in the alternative, partial summary judgment, on Plaintiff's Complaint because there are two independent reasons why Plaintiff cannot prevail as a matter of law and judgment should be entered in favor of Defendants:

- First, Defendants, while separate legal entities, are not capable of "concerted action" because they have the same "centers of decisionmaking." Both Defendants are made up of the same cities and the County of Riverside. Further, the STA Board of Directors and the SSG Board of Directors, which govern the actions taken by the agencies, ***are identical***. Even high-level staff is the same. (*Am. Needle, Inc. v. NFL*, 130 S. Ct. 2201, 2208 (2010).)
- Second, Defendants are immune pursuant to the State Action Immunity because the California legislature has afforded local agencies with enormous power to regulate the activities of the taxi cab business. (*Golden State Transit Corp. v. Los Angeles*, 726 F.2d 1430 (9th Cir. 1984) (*cert denied* 471 U.S. 1003 (1985), criticized on other grounds in *Traweek v. San Francisco*, 920 F.2d 589, 591 (9th Cir. 1990).)

As discussed in more detail below, Defendants request that judgment be

entered in their favor.

II. STANDARD OF REVIEW

A party may move for summary judgment if there is no genuine dispute as to any material fact, and it is entitled to judgment as a matter of law. (Fed. R. Civ. P. 56(a).) A party need not disprove the plaintiff's claims; it need only identify those issues on which plaintiff cannot meet its burden of proof at trial. (*Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986); *El v. Crain,* 560 F.Supp.2d 932, 936 (C.D. Cal. 2008).)

III. THE COMPLAINT

The gist of the Complaint is that SSG and STA are in some sort of a conspiracy to reduce the revenue that can be earned by ACL. Plaintiff alleges that "[t]he General Manager and a majority of the employees and staff of STA and SSG are the same and the separate existence between these two entities, in reality, does not exist." (Complaint, ¶ 9.) Plaintiff further alleges that "[t]he members of SSG and STA are nearly identical." (*Id.* at ¶ 23.) According to the Complaint, SSG and STA violated Section 1 by:

- Prohibiting taxi companies from making arrangements for exclusive or preferential service rights;
- Setting taxi cab rates;
- Setting the amount of taxi cab permits to each franchise;
- Controlling the advertising on taxi cabs;
- Controlling the location of taxi cabs stands;
- Accepting funding from Riverside County Transportation Commission for offering paratransit services.

/ / /

/ / /

IV. BACKGROUND ON DEFENDANTS

In 1977, nine Coachella Valley cities and the County of Riverside created STA, a joint powers authority, to provide and operate a public transportation system in the Coachella Valley through the operation of a bus system. (Request for Judicial Notice ["RJN"], Ex. 1, p. 6; Declaration of Carolyn Rude ("Rude Decl."), Ex. A, p. 6.) Under the STA Joint Powers Agreement, STA "shall be administered by a Board of Directors." (RJN, Ex. 1, p. 7; Rude Decl., Ex. A, p. 7.) In addition, the Board of Directors "shall have the common power to all parties, hereto, to own, operate and maintain a public transit system." (RJN, Ex. 1, p. 9; Rude Decl., Ex. A, p. 9.) As required by state and federal law, STA also provides Americans with Disability Act ("ADA") required parallel service in the form of a Dial-A-Ride program.[1]

In 1993, those ***same*** nine Coachella Valley cities and the County of Riverside formed SSG, another joint powers authority. (RJN, Ex. 2, p. 28-29; Rude Decl., Ex. B, p.28-29.) Just like STA, SSG "shall be administered by a Board of Directors . . . representing each of the parties to this Agreement." (RJN, Ex. 2, p. 35; Rude Decl., Ex. B, p. 35.) Similar to STA, "[a]ll of the powers and authorities of [SSG] shall be exercised by the Board of Directors." (RJN, Ex. 2, p. 37; Rude Decl., Ex. B, p. 37.)

As described above, STA and SSG are governed by a board of directors. STA's Board of Directors is made up of the following:

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[1] See 42 U.S.C. § 12143(a) ["General rule: It shall be considered discrimination for purposes of section 202 of this Act [42 USCS § 12132] and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service) to fail to provide with respect to the operations of its fixed route system, in accordance with this section, paratransit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs, that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system."].)

- For each city, a city councilmember;
- For the County of Riverside, a member of the County of Riverside Board of Supervisors. (RJN, Ex. 1, p. 7-8; Rude Decl., Ex. A, p. 7-8.)

Pursuant to the SSG Joint Powers Agreement, each member municipality ***must*** use the ***same*** director from the STA Board of Directors to serve on the SSG Board of Directors. (RJN, Ex. 2, p. 35; Rude Decl., Ex. B, p. 35.) In addition, the principal office of SSG is that of STA. (RJN, Ex. 2, p. 37; Rude Decl., Ex. B, p. 37.) ***Therefore, while STA and SSG are legally distinct entities, they were formed by the same public entities, governed by the exact same directors, and have the same centers of decisionmaking.***

For example, the STA Board of Directors generally meets every fourth Wednesday of the month at 12:00 p.m. (Rude Decl., ¶ 9.) When it meets, and unless there is a joint meeting, the SSG Board of Directors' meeting begins immediately thereafter. (*Ibid.*) The transition between the two meetings is seamless because the identical directors serve both bodies!

In addition to the above, even several staff members share joint positions. For instance, Mikel Oglesby serves as the general manager for both STA and SSG. (Rude Decl., ¶ 8.) The SSG Joint Powers Agreement actually requires use of the same general manager. (RJN, Ex. 2, p. 40; Rude Decl., Ex. B, p. 40.) Also, Carolyn Rude serves as the Clerk for both the STA and the SSG Board of Directors. (Rude Decl., ¶ 2.)

V. SECTION 1 OF THE SHERMAN ACT

A violation of Section 1 of the Sherman Act requires three elements:

1. Concerted activity involving more than one actor;
2. An unreasonable restraint on trade; and
3. An effect on interstate or foreign commerce

"Every contract, combination in the form of a trust or otherwise, or,

conspiracy, in restraint of trade" is made illegal by Section 1 of the Sherman Act, ch. 647, 26 Stat. 209, as amended, 15 U.S.C. § 1. Taken literally, the applicability of Section 1 to "every contract, combination . . . or conspiracy" could be understood to cover every conceivable agreement, whether it be a group of competing firms fixing prices or a single firm's chief executive telling her subordinate how to price their company's product. "But even though, 'read literally,' [Section] 1 would address 'the entire body of private contract,' that is not what the statute means." (*Am. Needle, Inc. v. NFL*, 130 S. Ct. 2201, 2208 (2010) ("*Am. Needle*").)

A. Concerted Action Requires More than Legally Distinct Entities

In *Am. Needle*, the United States Supreme Court analyzed when legally distinct entities can engage in "concerted action." In 1963, National Football League ("NFL") teams formed the National Football League Properties ("NFLP") to develop, license, and market their intellectual property. (*Id.* at 2207.) In 2000, the teams voted to allow NFLP to grant exclusive licenses to manufacture and sell trademarked headwear for all 32 teams. Plaintiff American Needle, Inc., was denied such a license and sued, alleging the agreements between the NFL, its teams, NFLP, and Reebok violated Sections 1 and 2 of the Sherman Act. (*Ibid.*) The district court and Seventh Circuit Court of Appeals found that Section 1 liability could not apply, because the teams were essentially a single entity, rather than a joint venture. (*Id.* at 2207-2208.)

The Supreme Court began its analysis by reviewing the text of Section 1, noting that "[n]ot every instance of cooperation between two people is a potential 'contract, combination . . . , or conspiracy, in restraint of trade.'" (*Id.* at 2208.) The Supreme Court also described the distinction between Sections 1 and 2 of the Sherman Act:

> Section 1 applies only to concerted action that restrains trade.
>
> Section 2, by contrast, covers both concerted and independent action, but only if that action "monopolize[s]," 15 U.S.C. § 2, or "threatens

> actual monopolization," *Copperweld,* 467 U.S., at 767, 104 S. Ct. 2731, 81 L. Ed. 2d 628, a category that is narrower than restraint of trade.

(*Id.* at 2208-2209.) Nonetheless, "concerted action under § 1 does not turn simply on whether the parties involved are legally distinct entities. ***Instead, we have eschewed such formalistic distinctions in favor of a functional consideration of how the parties involved in the alleged anticompetitive conduct actually operate.***" (*Id.* at 2209, emphasis added.)

Although the Supreme Court previously used to treat cooperation between legally separate entities, known as "intraenterprise conspiracy doctrine" as necessarily covered by Section 1, it now called for a "more functional analysis." (*Id.* at 2210.) In *Am. Needle,* the Supreme Court reviewed its prior cases to establish that this "more functional analysis" was appropriate. (*Id.* at 2210-2211.)

For instance, in *Sunkist Growers, Inc. v. Winckler & Smith Citrus Products Co.*, 370 U.S. 19 (1962), several agricultural cooperatives that were owned by the same farmers were sued for violations of § 1 of the Sherman Act. (*Id.* at 24-25.) Applying a specific immunity provision for agricultural cooperatives, the Supreme Court held that the three cooperatives were "in practical effect" one "organization," even though the controlling 12,000 farmers "have formally organized themselves into three separate legal entities." (*Id.* at 29.) "To hold otherwise," the Supreme Court explained, "would be to impose grave legal consequences upon organizational distinctions that are of *de minimis* meaning and effect" insofar as "use of separate corporations had [no] economic significance." (*Ibid.*)

More recently, in *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984), the Supreme Court remarked that a parent corporation and its wholly owned subsidiary "are incapable of conspiring with each other for purposes of § 1 of the Sherman Act." (*Id.* at 777.) Because joint conduct by two such entities does not "depriv[e] the marketplace of independent centers of decisionmaking," (*id.* at 769),

an agreement between them cannot suffice for Section 1 purposes.

In *Am. Needle*, the Supreme Court summarized its review of relevant precedent:

> The key is whether the alleged "contract, combination . . . , or conspiracy" is concerted action--that is, whether it joins together separate decisionmakers. The relevant inquiry, therefore, is whether there is a "contract, combination . . . or conspiracy" amongst "separate economic actors pursuing separate economic interests," [citation omitted] such that the agreement "deprives the marketplace of independent centers of decisionmaking," [citation omitted], and therefore of "diversity of entrepreneurial interests," [citation omitted], and thus of actual or potential competition, [citation omitted].

(*Am. Needle, Inc., supra,* 130 S.Ct. at 2211-2212.) Ultimately, "[t]he question is ***whether the agreement joins together 'independent centers of decisionmaking.'*** [citation omitted]. If it does, the entities are capable of conspiring under § 1, and the court must decide whether the restraint of trade is an unreasonable and therefore illegal one." (*Id.* at 2212, emphasis added.)

B. Actions of Municipalities Are Immune from Antritrust Liability if Committed Pursuant to State Policy

As a general rule, the anticompetitive actions of a state are immune from the reach of antitrust laws. (*Traweek v. San Francisco*, 920 F.2d 589, 591 (9th Cir. 1990).) This is known as the State Action Immunity. It was created by the Supreme Court in *Parker v. Brown,* 317 U.S. 341, 350-352 (1943). However, the immunity extends beyond just actions by the state. Rather, a municipality's acts are also immune, if authorized by state policy. (*Traweek, supra,* 920 F.2d at 591.)

The Ninth Circuit applies a two-part test "to determine whether a 'clearly articulated' state policy has authorized a municipality's anticompetitive actions." (*Jones v. City of McMinnville*, 244 Fed.Appx. 755, 759 (9th Cir. 2007).) "First, a

court must determine whether the legislature authorized the challenged actions of the [municipality]. Second, the court must determine whether the legislature intended to displace competition with regulation." (*Traweek, supra,* 920 F.2d at 591-592.) Nonetheless, "the Supreme Court has not required express authorization of particular anticompetitive acts and has applied state action immunity when the actions were a ***foreseeable*** result of a broader statutory authorization." (*Shames v. Cal. Travel & Tourism Comm'n*, 626 F.3d 1079, 1083 (9th Cir. 2010), emphasis added.)

For example, in *Town of Hallie v. City of Eau Claire*, neighboring towns filed suit against the City of Eau Claire, arguing that the city held an unlawful monopoly over sewage treatment services. (471 U.S. 34, 37 (1985).) The Court held that the city's actions were immunized because they were a "foreseeable result" of the state legislature's statutory authorization to municipalities to provide (or refuse to provide) sewage services to unincorporated areas. (*Id.* at 42.) The Court again noted that a legislature need not expressly state in the statute or legislative history that it intends for the action to have anticompetitive effects, so long as the legislature had contemplated the action that was taken:

> We think it is clear that anticompetitive effects logically would result from this broad authority to regulate.

(*Ibid.*) The Court also rejected the contention that the city needed to show the state had "compelled" it to act. (*Id.* at 45; *see also So. Motor Carriers Rate Conf., Inc. v. United States*, 471 U.S. 48, 58 (1985) ["The Midcal test does not expressly provide that the actions of a private party must be compelled by a State in order to be protected from the federal antitrust laws."]; *Mercy-Peninsula Ambulance, Inc. v. County of San Mateo*, 791 F.2d 755, 758 (9th Cir. 1986) [Finding that Health and Safety Code section 1797.204, relating to regulation of emergency medical services, allows for "[v]irtually any anti-competitive effect, including exclusive contracts with primary providers and elimination of backup ambulance services altogether."].)

C. Taxi Cab Regulation Pursuant to California Law

Both California statutes and courts have made it clear that taxi cabs are subject to extensive local regulation.

In *Golden State Transit Corp. v. Los Angeles*, 726 F.2d 1430 (9th Cir. 1984) (*cert denied* 471 U.S. 1003 (1985), criticized on other grounds in *Traweek, supra*), a taxi cab company, like here, brought a complaint for violation of Section 1 of the Sherman Act against the City of Los Angeles when the City refused to renew its taxicab franchise. The Ninth Circuit analyzed the case under the State Action doctrine. The Court used a prior test and stated that "to prove that a policy is clearly articulated and affirmatively expressed, the City must demonstrate not only the existence of a state policy to displace competition with regulation, but also that the legislature contemplated the kind of actions alleged to be anticompetitive." (*Id.* at 1433.) The Court found that the state had exercised control over taxi cabs pursuant to the Passenger Charter-Party Carriers' Act (Pub. Util. Code §§ 5351 et seq.). (*Ibid.*) The Court also referenced Public Utilities Code section 5353(g):

> This chapter does not apply to any of the following . . .
>
> (g) Taxicab transportation service licensed and regulated by a city or county, by ordinance or resolution, rendered in vehicles designed for carrying not more than eight persons excluding the driver.

The Court further found that the "[California] legislature has determined that public transportation by taxicab should be regulated and that preferably the regulation should be handled by local government." (*Id.* at 1434.) The Court later concluded that "[t]he California Constitution and California's statutes show an affirmatively expressed and clearly articulated state policy to displace competition with regulation in the taxicab industry. The challenged actions of the City were taken pursuant to that policy and were contemplated by the legislature." (*Id.* at 1434-1435; see also *In re Application of Graham*, 93 Cal. App. 88, 92 (Cal. App. 1928) ["It cannot be doubted that the city council has the authority to abolish taxicab stands from the

streets."]; *In re Petersen*, 51 Cal. 2d 177, 183 (1958) ["It seems obvious that, since a municipality may deny the use of its streets to all but one common carrier, it may validly direct that each of several taxicab owners use separate stands."].) Therefore, the Court affirmed summary judgment in favor of the City of Los Angeles on the Section 1 claim. (*Id.* at 1435.)

In *Cotta v. City and County of San Francisco*, 157 Cal. App. 4th 1550, 1560 (2007), the court of appeal made note of the broad regulatory powers that local agencies wield over the taxi cab business:

> Local authorities act pursuant to their police power in regulating virtually all aspects of the taxicab business, including who may operate a cab, how many cabs may be operated, how much cabs may charge, where cabs may travel, and where cabs may pick up passengers. (See, e.g., *O'Connor v. Superior Court*, 90 Cal. App. 3d 107, 113–114 (1979) [153 Cal. Rptr. 306] [license or permit to operate a taxicab is granted by local government entity pursuant to police power]; *People ex rel. Freitas v. City and County of San Francisco*, 92 Cal. App. 3d 913, 923, 927 (1979) [155 Cal. Rptr. 319] [affirming City's power to regulate cabs]; *In re Petersen*, 51 Cal. 2d 177, 182–183 (1958) [331 P.2d 24] [affirming City's power to designate certain stands for the exclusive use of certain taxi companies in picking up passengers]; *People v. Buck*, 101 Cal. App. 2d Supp. 912, 915 (1950) [226 P.2d 87] [affirming power of county to prohibit cabs from operating in specific areas of county]; *People v. Galena*, 24 Cal. App. 2d Supp. 770, 775 (1937) [70 P.2d 724] (Galena) [affirming power of city supervisors to regulate taxicab stands to promote the convenience, safety, and welfare of the traveling public, and to adopt measures that will best assure adequate service and will be of the most practical benefit].)

In *Luxor Cab Co. v. Cahill*, 21 Cal. App. 3d 551 (1971), the plaintiff cab drivers and a taxi cab company challenged the city's issuance of additional cab medallions, arguing that it "infringed on the vested rights of present certificate holders." (*Id.* at 558.) The court rejected the argument:

> The use of streets by taxicabs is a privilege that may be granted or withheld without violating either due process or equal protection. This privilege may be granted exclusively or nonexclusively to render public services [citation]. In any event, the granting or withholding of a privilege based upon certificates of public convenience and necessity presents no judicial controversy touching on the impairment of vested rights [citation].

(*Ibid.*) The Passenger Charter-Party Carriers' Act (Pub. Util. Code §§ 5351 et seq.), referenced above in *Golden State Transit Corp.*, continues to authorize municipal regulation of taxi cabs.

Further statutory support for municipal regulation lies elsewhere in the California code. For instance, Vehicle Code section 21112 states:

> Local authorities may by ordinance license and regulate the location of stands on streets and highways for use by taxicabs and other public carriers for hire in their respective jurisdictions . . .

In fact, Government Code section 53075.5 explicitly ***commands*** local regulation:

> (a) Notwithstanding Chapter 8 (commencing with Section 5351) of Division 2 of the Public Utilities Code, every city or county ***shall*** protect the public health, safety, and welfare by ***adopting*** an ordinance or resolution in regard to taxicab transportation service rendered in vehicles designed for carrying not more than eight persons, excluding the driver, which is operated within the jurisdiction of the city or county. (Emphasis added.)[2]

[2] As already described, both SSG and STA are joint powers authorities made up of

The statute goes on to provide that the city or county must have a policy for entry into the taxi cab business, an establishment of rates, and mandatory controlled substance and alcohol testing. However, a city or county may even adopt ***additional*** requirements for taxi cabs:

> Nothing in this section prohibits a city or county from adopting additional requirements for a taxicab to operate in its jurisdiction.

(Gov. Code § 53075.5(d).)

VI. ARGUMENT

A. STA And SSG Are Not Competitors and Have Identical "Centers of Decisionmaking"

There is no dispute that STA and SSG are ***legally*** distinct entities. However, as the Supreme Court has repeatedly decided, that is not sufficient for them to be capable of "concerted action." Rather, the Court must analyze how the two entities "actually operate" and if they have independent "centers of decisionmaking." (*Am. Needle, Inc. v. NFL*, 130 S.Ct. 2201, 2209, 2212 (2010).) As is clear from the identical entities that formed STA and SSG, as well as the identical directors that govern them and mutual staff, STA and SSG lack independent centers of decisionmaking and are incapable of concerted action.

As described above, STA and SSG ***were both formed by the same ten public entities***: nine cities and the County of Riverside. STA and SSG exercise powers that these cities and the County of Riverside would have otherwise exercised on their own. (Gov. Code § 6502.) Further, rather than forming two separate entities, those ten municipalities could have just formed one joint powers authority to utilize the powers that both STA and SSG currently utilize. Just as in *Sunkist Growers, Inc.,*

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numerous Coachella Valley cities and the County of Riverside. Pursuant to the Joint Exercise of Powers Act, they may exercise "any power common to the contracting parties." (Gov. Code § 6502.) Therefore, both SSG and STA can utilize the powers provided to their members.

supra, where 12,000 farmers created three legally separate cooperatives instead of one, the fact that ten public entities created ***two*** joint powers authorities instead of ***one***, is of *de minimis* meaning and should not render Defendants liable for a Section 1 cause of action. (See 370 U.S. 19, 29.)

Most importantly, ***STA and SSG have the exact same directors on their Boards of Directors***. And this is not mere coincidence; rather, it is ***required*** by the terms of the SSG Joint Powers Agreement. (RJN, Ex. 2, p. 35; Rude Decl., Ex. B, p. 35.) These ***identical*** ten individuals set policies and govern the actions taken by ***both*** Defendants. Further establishing their identical decisionmakers, STA and SSG even have identical members of their high-level staff. (Rude Decl., ¶¶ 2, 8.) ***Even Plaintiff admits this***: "The General Manager and a majority of the employees and staff of STA and SSG are the same and the separate existence between these two entities, in reality, does not exist." (Complaint, ¶ 9.) Plaintiff further admits that "[t]he members of SSG and STA are nearly identical." (*Id.* at ¶ 23.) By Plaintiff's own admissions it is clear that STA and SSG cannot engage in concerted action because of their similarities.

As a result, Defendants lack the "independent centers of decisionmaking" required to engage in concerted action. Because Defendants are not capable of concerted action, Plaintiff's Section 1 cause of action fails.

B. SSG and STA Are Immune From Antitrust Claims Due To The State Action Immunity Afforded Taxicab Regulation

Further, if even capable of concerted activity, the Court must analyze Defendants' actions under the State Action Immunity. "First, a court must determine whether the legislature authorized the challenged actions of the [municipality]. Second, the court must determine whether the legislature intended to displace competition with regulation." (*Traweek, supra,* 920 F.2d at 591-592.) In addition, "the Supreme Court has not required express authorization of particular anticompetitive acts and has applied state action immunity when the actions were a

foreseeable result of a broader statutory authorization." (*Shames v. Cal. Travel & Tourism Comm'n*, 626 F.3d 1079, 1083 (9th Cir. 2010), emphasis added.)

Here, it is evident from multiple statutes and cases that STA and SSG are immunized by the State Action Immunity. Preliminarily, the application of the State Action Immunity to municipal regulation of taxi cabs in California was ***already decided*** by the Ninth Circuit in *Golden State Transit Corp. v. Los Angeles*, 726 F.2d 1430 (9th Cir. 1984) (*cert denied* 471 U.S. 1003 (1985)), criticized on other grounds in *Traweek, supra*). There, the Ninth Circuit found that the City of Los Angeles was immune from Sherman Act Section 1 liability based on the State Action Immunity and affirmed summary judgment on behalf of the city. (*Id.* at 1435.) Like in *Golden State*, the heart of ACL's Complaint is Defendants' regulation of the taxicab industry.

As affirmed in *Golden State*, it is clear that the California legislature not only authorized local agencies to regulate the taxi cab industry, ***it actually commanded it***. The numerous statutes ***explicitly*** direct local agencies to adopt ordinances or resolutions to regulate taxicabs. (Gov. Code § 53075.5, Veh. Code § 21112.) For instance, Vehicle Code section 21112 explicitly states that public agencies may regulate "the location of stands on streets and highways for use by taxicabs and other public carriers for hire." Further, while Government Code section 53075.5 lists *a few* required taxi cab regulations that must be adopted, it explicitly states "[n]othing in this section prohibits a city or county from adopting ***additional*** requirements for a taxicab to operate in its jurisdiction." (Gov. Code § 53075.5(d), emphasis added.) This provides local agencies with the ***broadest possible*** statutory authorization to govern the taxi cab industry, as a part of their police power.

Pursuant to state law, Defendants have limitless authorization to regulate taxi cabs, including ACL. This regulation allows Defendants to commit the alleged acts that ACL alleges constitute antitrust violations, such as regulating the location of taxi cabs and their stands, setting rates, franchising, taxi cab advertising, and

prohibiting exclusive agreements. In fact, many of these actions are explicitly called out by statute. Further, the A.D.A. *mandates* that STA provide parallel paratransit service (42 U.S.C. § 12143), which STA does in the form of a Dial-A-Ride program. Therefore, STA cannot be liable for providing this service.

Altogether, it is clear that Defendants' actions are a "foreseeable result" of the state legislature's broad statutory authorization to municipalities to regulate the taxi cab industry. As a result, both STA and SSG are immune from Section 1 liability and ACL's Complaint fails.

VII. CONCLUSION

For all the foregoing reasons, STA and SSG cannot be liable in the above action and request judgment be entered in their favor. They are incapable of "concerted action" and even if they could conspire, the State Action Immunity still immunizes their acts of regulating the taxi cab industry.

Dated: February 28, 2013

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